

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ZANGO, INC.,

Plaintiff,

v.

KASPERSKY LAB, INC.,

Defendant.

NO. 07 CV 0807 JCC

DECLARATION OF
GREGG BERRETTA IN
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS

I, GREGG BERRETTA, declare as follows:

1. I am Director of Industry Affairs for Zango. I make this declaration based on personal knowledge.

2. Zango has sued Kaspersky Labs, Inc., and PC Tools, and not certain other anti-spyware scanning application companies, because the others do not appear to harm Zango's relationships with its customers in the same fashion. I downloaded products offered by three market leaders, McAfee, Norton (Symantec) and Webroot, and tested them to determine how they affected Zango. Each of the scanning application products from the industry leaders advised the user of the presence of Zango programs without an inflammatory characterization or misidentification. Each also gave the user a clear choice to allow Zango, or ignore the advisory, and then proceeded to act based on the consumer's decision and choice. Zango thus can co-exist

DECLARATION OF GREGG BERRETTA IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS - 1
No. 07-CV-0807

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1 with these providers' products. Attached as Exhibits 1-3 are true and accurate copies of
2
3 screenshots showing the advisement and the option offered by these programs.
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5 3. I believe Kaspersky has (or likely has) contracts with Washington businesses that
6
7 relate to the marketing and sale of KIS. First, Kaspersky is available for sale via Seattle-based
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9 Amazon.com. Attached as Exhibit 4 is a true and accurate copy of printout of a web page
10 showing that Amazon.com sells KIS 6.0 for \$59.99 (and other Kaspersky products, too).
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13 Second, attached as Exhibit 5 is a true and accurate copy of a printout of search results from
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15 MSN.com showing Kaspersky to be a "sponsored site" when Kaspersky is used as a search term.
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17 Sponsored sites link searchers to the web sites of companies, such as Kaspersky, that pay search
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19 providers like MSN.com for prioritized placement in search results. Paying to be a sponsored
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21 site is a form of Internet-based marketing.
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23 4. I have confirmed that KIS 6.0 is sold by Fry's Electronics superstore located at
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25 800 Garden Avenue in Renton, Washington.
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27 I declare under penalty of perjury pursuant to the laws of the State of Washington that the
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29 foregoing is true and correct.
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31 DATED this 29th day of June, 2007, at Bellevue, Washington.
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Gregg Berretta

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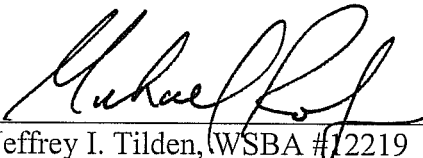
CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following persons:

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